

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JERRY L. SEWARD,)	
)	
Petitioner,)	
)	
-vs-)	Case No. CIV-14-414-F
)	
KAMERON HARVANEK,)	
Warden,)	
)	
Respondent.)	

ORDER

On May 2, 2014, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation, recommending that petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed without prejudice for lack of jurisdiction.

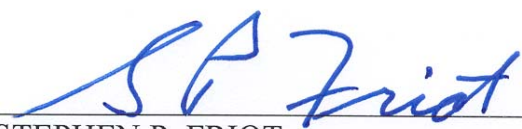
Presently before the court is petitioner's timely objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of the matter. Having done so, the court concurs with the analysis of Magistrate Judge Purcell. The court agrees that petitioner's petition constitutes a second or successive § 2254 petition, petitioner has not alleged or demonstrated prior authorization from the Tenth Circuit Court of Appeals to file the second or successive petition, it would not further the interest of justice to transfer the petition to the Tenth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631 to obtain the requisite authorization, and hence, dismissal of the petition is required. In addition, the court concludes that petitioner's objection in regard to Magistrate Judge Purcell's

recommendation is without merit. The court therefore accepts, adopts and affirms the Report and Recommendation in its entirety.

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts requires the district court to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Where, as here, the district court dismisses a § 2254 petition on procedural grounds, a certificate of appealability should issue only if the petitioner can demonstrate both “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). The court concludes that petitioner has not made the requisite showing. Thus, the court denies petitioner a certificate of appealability.

Accordingly, the Report and Recommendation issued by Magistrate Judge Gary M. Purcell on May 2, 2014 (doc. no. 10) is **ACCEPTED, ADOPTED** and **AFFIRMED**. Petitioner’s petition for a writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction. A certificate of appealability is **DENIED**.

DATED May 15, 2014.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE